

### REMARKS

This is in full and timely response to the above-identified Office Action. The above listing of the claims supersedes any previous listing. Favorable reexamination and reconsideration are respectfully requested in view of the preceding amendments and the following remarks.

#### Claim Status/Amendments

In this response, claim 8 has been rewritten to assume independent form. Inasmuch as this claim has been indicated as containing allowable subject matter, it is submitted that claims 8 and 9 now stand in *prima facie* condition for allowance. Claim 17 stands allowed.

Claim 5 has been amended in accordance with the objection that recites a number of alternative elements in a Markush group. However, it is noted that MPEP 2173.05(h) also indicates that alternative expressions are permitted if they present no uncertainty or ambiguity with respect to the question of scope or clarity of the claims. It is submitted that claim 5 has been so amended and thus overcomes the rejection under 35 USC § 112, second paragraph.

Claims 1, 3 and 15 have been amended, claim 4 has been cancelled and the dependencies of claims 6, 12 and 13 have been amended in light of this cancellation.

#### Rejections under 35 USC § 102

The rejection of claims 1-3, 13, 15 and 16 under 35 USC § 102(b) as being anticipated by Prosenz is respectfully traversed.

In this response claim 1 has been amended via the inclusion of the subject matter of claim 3; and claim 15 has been amended to assume independent form via the inclusion of the subject matter of claim 1.

Claim 1 now recites an energy absorbing material which is different from the "solid material . . . surrounding at least a portion of said rod", which material controls the movement of the elements about the rod, upon impact. It is submitted that no such additional material is disclosed in Prosenz and thus claim 1 is seen as distinguishing over this reference.

The rejection of claims 2, 3, 5, 6, 12 and 13 is deemed to fall with the fall of the rejection of claim 1.

Claim 15 as amended to assume independent form is also such as to recite an energy

absorbing material which is different that the solid material form which the structural elements are made, and further defines the energy absorbing material to be affixed along one or both of the vertical surfaces formed on the shoulder of the structural elements. The Prosenz reference does not disclose this structure and therefore cannot be relied upon for anticipation purposes.

Rejections under 35 USC § 103

- 1) The rejection of claim 5 under 35 USC § 103(a) as being unpatentable over Prosenz is respectfully traversed.

The position that it is well known to use the listed materials in crash barriers is seasonably challenged in accordance with MPEP 2144.03. Demonstration of this alleged well know usage via the citation of a reference or reference is requested.

Further, the disclosure of Prosenz does not suggest the need for Teflon® coatings or the like. Therefore, just because it such materials are know, does not render it obvious under §103 to use it in the barrier arrangement such as disclosed in Prosenz. Indeed, the cost of this addition would seem to deter the use of the claimed materials if they were not indeed necessary.

- 2) The rejection of claim 6 under 35 USC § 103(a) as being unpatentable over Prosenz and further in view of Smith is respectfully traversed.

First, this rejection falls with the fall of the anticipation rejection of claim 1. Further Smith pertains to modules to be placed atop of barriers which are disposed between highways. There is no disclosure of the barriers being arranged to absorb impact and therefore nothing to suggest to the hypothetical person of ordinary skill that teachings which are found in this reference pertaining to mounting the modules, could be transferred to those which are found in Prosenz for any beneficial purpose. Further, the position that Smith discloses a cup-lined bore, does not appear to be well taken. Element 34 is disclosed as being a tube which is disposed in a mold from which the lightweight glare attenuating module is molded.

Conclusion

It is respectfully submitted that the claims as they have been amended are allowable over the art which has been applied in this Office Action. Favorable reconsideration and allowance of this application are courteously solicited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,  
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